

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-1295

TERRANCE QUARTEZ JARRETT
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 13, 2009

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NOS. CR-03-305, CR-03-382, CR-03-
383, CR-03-384]

HONORABLE JAMES O. COX,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Terrance Jarrett appeals the revocation of his suspended imposition of sentence (SIS) on four underlying drug-related cases (CR-03-305, CR-03-382, CR-03-383, and CR-03-384). Appellant contends that the Sebastian County Circuit Court erred by finding that he violated the terms and conditions of his suspended sentence by committing aggravated assault. According to appellant, the evidence was insufficient to support the revocation. We affirm.

The State filed a petition to revoke appellant's SIS on May 21, 2008, alleging that appellant committed the new offense of aggravated assault on May 8, 2008. The State also alleged that appellant failed to pay fees as ordered by the court.

The revocation hearing took place on July 2, 2008. Wayne Barnett, a Narcotics Detective with the Fort Smith Police Department, testified that he was working on a case involving appellant on May 8, 2008. According to Det. Barnett, they received information

that Brian Cunningham was at appellant's residence. Det. Barnett stated that Craig Robbie, the parole officer, asked the police to place the house under surveillance and to have a vehicle stop appellant and Mr. Cunningham when they left.¹ Det. Barnett testified that he and Corporal Albert Flesher were staged in the parking lot of the fire station, located at Albert Pike and Spradling, waiting for appellant and Mr. Cunningham to leave. Det. Barnett stated that he was radioed with appellant's travel direction and that he relayed that information to Cpl. Flesher. Det. Barnett said that as appellant's vehicle neared Spradling, Cpl. Flesher "pulled out, went through the intersection, and turned east on Spradling where he was actually meeting [appellant] as he was coming through." Det. Barnett testified that he saw Cpl. Flesher turn his lights on, turn his vehicle partially into the lane of appellant's vehicle, stop, and point his arm out of the window telling appellant to pull into a nearby driveway. Det. Barnett stated that appellant put his vehicle in reverse and stopped. Appellant then put his vehicle in drive, striking the SUV in front of him. After striking the SUV, appellant stopped, backed up, and then turned his vehicle toward Det. Barnett. According to Det. Barnett, appellant "floored it" and struck the front driver's side quarter panel and the door of his vehicle. Det. Barnett stated that it looked like appellant deliberately ran into him. Det. Barnett testified:

Once the contact had been made with it, he kept the accelerator down on the floor with the tires just spinning and smoking as he was pushing my car almost turning the front of it sideways out of the way. From there, he put it in reverse and backed up again and went forward and went between the space that he had created between my unit and the marked patrol unit.

¹Appellant and Mr. Cunningham were on parole at this time.

Officer Flesher, as soon as he had started to back up, got out of his vehicle and was still standing and yelling for him to stop. He was standing there in police uniform, which [appellant] just didn't pay any attention to him and he just missed Corporal Flesher within inches of running over him. . . . Whenever he backed up, I thought he was going to back up and ram me again. I thought he was just trying to disable my car or hurt me.

On cross, Det. Barnett stated that the initial point of contact was at the front of his vehicle. He testified that his vehicle and the SUV were basically side by side. According to Det. Barnett, appellant fled across the grass and went south on Albert Pike. Appellant finally pulled over on North Street.

Cpl. Flesher testified that he attempted to affect a traffic stop on appellant on May 8, 2008. Cpl. Flesher stated:

We had slowed traffic at the stop sign and I pulled in front of him and turned my blue lights on. I motioned back into the driveway where it was safe to be out of the roadway and he started backing up into the driveway and so I started exiting my vehicle and then he sped forward and almost hit me to get away. His vehicle was easily within a foot of me when it went by. There was no way for me to jump out of the way. I was between my police unit and his car. He crashed into the vehicle in front of me. The vehicle in front of me was a police vehicle and citizen vehicle both.

Cpl. Flesher stated that he jumped back into his vehicle for safety and was able to pursue appellant when he fled the scene. Appellant was eventually taken into custody.

On cross, Cpl. Flesher stated that he let appellant know that he was after him. He testified that he was trying to get back into his vehicle when appellant's vehicle went past him. Cpl. Flesher said that he heard the crash but that he did not see appellant's vehicle hit the SUV. According to Cpl. Flesher, he did not know what damage the SUV sustained.

Richard Smith, a Fort Smith firefighter, testified that he was at the fire station on May 8, 2008, when he heard "the crunch." According to Smith, when he looked up, he could

see appellant's vehicle trying to "wedge its way between two other vehicles. When that didn't work, the car was put in reverse and backed up and almost ran over Officer Flesher and then he put it into drive and he jumped through the grass area . . . to Albert Pike and headed south."

On cross, Smith stated that he immediately looked up when he heard the crunch. Smith testified that when he looked up, he saw "three cars in a row." According to Smith, the car in the middle backed up and left. Smith stated that appellant hit Det. Barnett's vehicle and the SUV at the same time. Smith said that he observed everything from Fire Station Number Five.

George Harley of the Fort Smith Police Department testified that he investigated the damaged vehicles on May 8, 2008. He stated that the SUV had damage to the left side of the vehicle "from the left rear to the left front." He stated that he did not recall damage to the back of the SUV. Officer Harley testified that Det. Barnett's vehicle had damage to the left front. He stated that the main damage he recalled on appellant's vehicle was "on the right side up front and then past the driver's door." Officer Harley stated that he did not remember damage to the front of appellant's vehicle. He explained, "I just get a mental image of all of that damage to the left or to the right front and down the side."

Appellant testified that he was in Fort Smith on May 8, 2008, with his cousin, Brian Cunningham. He stated that he saw the police car with its lights on but he did not know who the officer was trying to stop. Appellant stated, "I thought I would back up just in case he was telling me to back up and so I put my car in reverse and whenever I went to back up,

I turned around and that's when I noticed a maroon Tahoe. I didn't know who was in it because the windows were dark and I couldn't see in it." Appellant testified that he saw the driver's door "bust open" and that he saw someone "who looked like they were going to jump out of the car." Appellant stated that he was scared so he put his car in drive and went around. According to appellant, he did not know that there were officers in the maroon truck. He thought it was someone whom he "had a dispute [with] on a couple of occasions." Appellant testified that he put his car in drive and as soon as he turned around, he "seen the officer right there and I swerved and went around him." Appellant stated that he hit a maroon Nissan that pulled up in front of him and that the Nissan bumped him into a white Extera. Appellant said that he was scared and was trying to get away from the maroon truck and car. According to appellant, the windows on the maroon car were dark and he could not tell "if the driver was white, black, Hispanic or what." Appellant testified that he went between the two vehicles, cut over to Grand, and went down North Street. Appellant stated that a police officer was behind him so he put his car in park. Appellant said that he stopped the car because he did not want the officer to think that he was trying to flee. Appellant testified that he was not trying to hit Cpl. Flesher and that he did not run into Det. Barnett's vehicle. Appellant stated that Det. Barnett ran in front of him and that's when he struck Det. Barnett's vehicle. According to appellant, he was not trying to hurt anyone.

On cross, appellant stated that he did not know who Cpl. Flesher was trying to stop. Appellant testified that he drove off because he was scared of who he thought was in the

maroon truck. Appellant stated that he did not know what was going on and when he realized the police were after him, he pulled over.

The court told appellant that it did not find his explanation credible. The court did, however, find the testimony of Cpl. Flesher and Det. Barnett credible. The court further stated that it did not find the discrepancy between the witnesses' testimony to be such that it would "absolve [appellant] of the liability for this Rambo activity." The trial court found that appellant violated the terms and conditions of his suspended sentence by committing aggravated assault. Appellant was sentenced to six years' imprisonment and received an additional twenty-two years' suspended sentence. This appeal followed.

To revoke probation or a suspension, the circuit court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309(d) (Supp. 2006); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Haley, supra*; *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). A defendant appealing from a revocation determination has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Haley, supra*. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001). Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial

judge's superior position to resolve those matters. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003).

A person commits aggravated assault if he purposely, under circumstances manifesting extreme indifference to the value of human life, engages in conduct that creates a substantial danger of serious physical injury to another. Ark. Code Ann. § 5-13-204(a)(1) (Repl. 2006). Appellant argues that the trial court erred in finding that he committed aggravated assault and subsequently violated the terms and conditions of his SIS. We disagree.

The evidence in this case clearly shows that appellant engaged in conduct that created a substantial danger of serious physical injury to others. First, appellant nearly struck Cpl. Fleisher as he was exiting his vehicle to make contact with appellant. Second, appellant ran into a civilian's SUV causing damage to the left side of that vehicle. Third, appellant pointed his vehicle toward Det. Barnett's occupied vehicle making contact on the front driver's side of that vehicle. Appellant still did not stop; he cut through the grass, went south on Albert Pike, and eventually pulled over on North Street. Appellant gave an explanation why he did not stop when officers attempted to stop him on Spradling; however, the trial court did not find his explanation credible. We defer to the trial judge's superior position to resolve those matters. *Peterson, supra*. A preponderance of the evidence supports the trial court's finding that appellant violated the terms and conditions of his suspended sentence by committing aggravated assault. Accordingly, we affirm.

Affirmed.

GLOVER and HENRY, JJ., agree.